

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re B.B., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

N.S.,

Defendant and Appellant.

E065622

(Super.Ct.No. RIJ1300948)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson,
Judge. Affirmed.

Christy C. Peterson, under appointment by the Court of Appeal, for Defendant and
Appellant.

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman, and
Carole Nunes Fong, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court terminated defendant and appellant N.S.'s (Mother) parental rights to B.B. (Minor), born in October 2008. On appeal, Mother contends the court erred in finding inapplicable the parental relationship exception to termination of parental rights. We affirm.

I. FACTS AND PROCEDURAL HISTORY¹

On August 23, 2013, sheriff's deputies responded to a home based on reports of the theft of utilities. Officers found evidence of marijuana cultivation. The residence had illegal water and electrical bypasses. Mother was in a car outside the residence with her boyfriend and Minor. A methamphetamine pipe and methamphetamine were found in the car door. Minor's father was arrested for being under the influence of methamphetamine and charged with electricity theft.² Mother's boyfriend was arrested for being under the influence of controlled substances. Mother was charged with child endangerment.

Mother had a prior history with plaintiff and respondent, Riverside County Department of Public Social Services (the department). On July 30, 2009, a parole search of Minor's paternal grandmother's home resulted in the discovery of a filthy home full of fire hazards. Eight adults and three minors were in the home at the time. The

¹ Mother previously filed a petition for extraordinary writ from the first juvenile court order terminating her reunification services. By order dated April 5, 2016, we incorporated the record in that case with the instant case. We take the bulk of our recitation of the facts and procedural history in this opinion from the record in that case.

² Father is not a party to the appeal.

adults were smoking marijuana; bongs and marijuana plants were found inside the home. Mother arrived later and tested positive for methamphetamine. Allegations against Mother were deemed substantiated and Mother received family maintenance services until the dependency was terminated on October 4, 2010.

On March 16, 2012, allegations of emotional abuse and general neglect were received by the department. The former was deemed unfounded and the latter inconclusive. On June 20, 2012, the department received another allegation of general neglect, which was deemed unfounded. Allegations of emotional and sexual abuse and general neglect were made on June 16 and 17, 2013. The allegations were deemed unfounded. Mother had a criminal history, including two convictions for possession of controlled substances, two convictions for driving under the influence, and credit forgery.

The department placed Minor with the maternal great-grandmother (MGGM) on August 24, 2013. The department filed a Welfare and Institutions Code section 300³ dependency petition alleging Mother abused methamphetamine while caring for Minor and was arrested for being under the influence of controlled substances and child endangerment, exposed Minor to a detrimental home environment, had been subjected to domestic violence by her boyfriend, and had a criminal history. The court detained Minor on August 28, 2013.

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

In the jurisdictional and dispositional report filed on September 16, 2013, the social worker noted Minor had lived with the MGGM in the past and until he was three and half years old. Mother indicated she had used methamphetamine since she was 18 years old. When asked about their needs, the parents responded they needed stable housing. The case plan required that Mother attend general counseling, a domestic violence program, substance abuse services, test negative for drugs, and acquire stable housing.

On September 19, 2013, the juvenile court found the allegations in the amended petition true,⁴ found Minor a dependent of the court, removed Minor from the parents' custody, and ordered reunification services for the parents. In the status review report dated March 7, 2014, the social worker indicated that Mother, as part of her substance abuse program, completed 12 out of 24 individual interviews, 12 out of 24 education groups, and seven out of 24 required 12-step meetings. Mother drug tested negative seven times during the reporting period. She had attended individual counseling. Mother had yet to enroll in a domestic violence program.

Mother visited with Minor a minimum of two hours weekly, sometimes spending the night at MGGM's residence. MGGM did not like Mother spending the night as MGGM felt Mother used it as an opportunity to do laundry and as a place to stay.

⁴ The amended petition removed only the allegation that marijuana cultivation had been conducted inside the residence. It was now alleged the cultivation occurred in the garage.

Mother “indicated that she needs help with housing and childcare if [Minor] is to be returned to her.”

The social worker wrote that Minor could not be returned to Mother’s custody because Mother had not completed her case plan and “does not have a stable home and continues to go back and forth between the two men that she was using [drugs] with and arrested with.”

At the March 20, 2014 six-month review hearing, the court authorized transfer of the matter to Los Angeles County “once mom has a stable residence. She is attempting to get her own place.” The court continued Mother’s reunification services. In the 12-month review report filed on September 10, 2014, the social worker recommended that Mother’s reunification services be terminated because she did not have a stable residence. Overnight visits at MGGM’s home had stopped as Mother apparently used them to do laundry, talk on the telephone, and play on the computer, rather than spend time with Minor.

Mother completed her substance abuse program, parenting classes, and had participated in individual counseling. Nevertheless, she had still failed to enroll in a domestic violence program.

On September 22, 2014, the initial date set for the 12-month review hearing, Mother’s attorney reported that Mother had completed a domestic violence class online. In an addendum report filed on October 6, 2014, the social worker noted that a misdemeanor warrant for Mother’s arrest had been issued on June 17, 2014, for being

under the influence of a controlled substance.⁵ The social worker observed Mother “continues to have unstable housing living with various friends and now with a new boyfriend.” Mother completed a four-hour parenting education class and four-hour domestic violence program. Nevertheless, “[t]he Department feels that [Mother] would benefit from a more intense domestic [v]iolence program as she continues to get into relationships that are not healthy for [Minor] to be returned to.”

At the 12-month review hearing on October 22, 2014, Mother’s counsel reported that Mother’s hair follicle drug test was negative. Mother’s counsel observed Mother had not had stable housing, but since August she had been residing in Covina. Mother enrolled in additional parenting and domestic violence classes. The juvenile court found Mother had “made quite a bit of progress” and continued reunification services.

In the 18-month status review report filed February 9, 2015, the social worker again recommended that Mother’s reunification services be terminated. The result of Mother’s hair follicle drug test reported on October 22, 2014 was negative. Mother completed a parenting education program on September 19, 2014. She enrolled in individual counseling on December 27, 2014; had three sessions; and, according to her therapist, had “been motivated and cooperative with her goals.” Mother visited Minor four hours on Saturdays or Sundays. Nonetheless, Mother had indicated that she still needed help securing appropriate housing.

⁵ It is unclear from the record whether this warrant was based on Mother’s arrest in the initiating incident of the instant juvenile proceeding or was the result of a subsequent arrest.

In an addendum report filed March 16, 2015, the social worker noted: “On March 12, 2015, I spoke with [Mother’s] therapist . . . ; she indicated that [Mother] is doing well in therapy.” “They are . . . working on parenting issues and concerns that [Mother] might have about parenting her child since he has been out of her care for the past 19 months. The only continued concern that she has about returning [Minor] to her is that she does not have an appropriate home for him to return to.”

At the 18-month review hearing on March 19, 2015, the juvenile court found a substantial risk of detriment to Minor if returned to Mother’s custody, found the department had complied with the case plan, and terminated Mother’s reunification services. The court set the section 366.26 hearing.

In her petition for extraordinary writ, Mother contended insufficient evidence supported the juvenile court’s finding that reasonable services were provided by the department to Mother with respect to housing. We agreed, and in an opinion dated July 16, 2015, we granted her petition and remanded the matter with directions that if Mother’s housing situation remained unstable, the department offer her services aimed at ameliorating the situation.

In a report filed on July 9, 2015,⁶ the social worker recommended that the juvenile court terminate Mother’s parental rights. She noted Minor had been placed with relatives, now referred to as the prospective adoptive parents (PAPs), on March 28, 2015. Minor called them “mom” and “dad.” Minor cried “uncontrollably” when told by the

⁶ The report was not part of the record in the writ proceeding.

PAPs that they were not sure if he would see them again. Minor was relieved when the social worker told him her recommendation was to remain living with the PAPs and continue visiting Mother. The PAPs had a relationship with Minor since he was placed with the MGGM in 2013. Minor said he liked living “100%” with the PAPs, but also wanted to be with Mother.

Mother visited with Minor four hours weekly, two hours of which were unsupervised. Mother spent most her supervised time with Minor playing video games. The social worker expressed concern that during unsupervised visitation, Mother was taking Minor to homes and around people who were not cleared by the department. Mother was allowed thrice weekly telephone calls with Minor; however, Minor sometimes did not wish to take the calls. When he did speak with Mother, the calls typically lasted five minutes.

On July 20, 2015, after receiving our opinion in the writ proceeding, the juvenile court vacated the section 366.26 hearing and ordered preparation of an addendum report to contain information on a home evaluation for Mother and an assessment of any necessary services. The court also authorized increased visitation.

On August 14, 2015, the PAPs filed a de facto parent request noting they had assumed the role of Minor’s parents on a day-to-day basis and had had consistent and substantial contact with Minor for nearly two years. The PAPs also reported Mother had been having unsupervised, overnight, and weekend visits with Minor.

In an addendum report filed on August 19, 2015, the social worker again recommended that the court terminate Mother's parental rights. Mother notified the court on July 20, 2015 that she had secured appropriate housing, renting a room from her boss, and would be moving in on July 22, 2015. On July 27, 2015, the social worker contacted Mother and arranged for a home evaluation to be conducted on July 29, 2015. On that date, Mother e-mailed the social worker and said she would not be able to comply with the evaluation; she had yet to move in. On July 30, 2015, Mother informed the social worker that she would not be moving into the home; Mother said she would be moving in with her boyfriend instead.

On July 31, 2015, the social worker conducted a home evaluation of Mother's boyfriend's mother's home. Mother indicated she would be moving in the next weekend; however, Mother indicated she hoped she would get approved for an apartment with her friend. Mother said she was receiving Section 8 housing assistance.

Mother had had an unsupervised day visit with Minor on August 2, 2015, and an unsupervised overnight visit on August 8, 2015. On August 10, 2015, the social worker heard from Mother's therapist that Minor had slept in a trailer outside of Mother's boyfriend's mother's house during an overnight visit. The social worker informed Mother that the home, not the trailer, had been approved for an overnight visit.

Mother reported she had been working since March 2015. On August 14, 2015, the social worker sent Mother an e-mail informing her that the social worker could

potentially assist Mother financially with housing if Mother provided the social worker with income verification. Mother had yet to provide any documentation.

Mother missed a random drug test scheduled for August 12, 2015. Mother said she had not received the e-mail requesting the test until the following day. Mother showed up late to a drug test scheduled on August 14, 2015, and was unable to produce enough saliva to complete the test. Nevertheless, a THC strip resulted in a positive result for marijuana. Mother's visit for that weekend was cancelled.

Minor's therapist reported Minor said he would "99%" like to stay with the PAPs and "1%" like to go with Mother. He was open to visiting Mother, but refused telephone calls from Mother during the week. Minor was "very anxious" he would not be able to continue attending his current school. The court granted the PAPs' request for de facto parent status and ordered conjoint counseling for Mother and Minor on August 24, 2015.

In the addendum report filed on September 24, 2015, the social worker noted that after several additional requests, Mother had still failed to provide the income documentation necessary for the social worker to provide housing assistance. The social worker asked Mother if she wanted a housing referral in Riverside County, to which Mother responded she did not. Nevertheless, the social worker completed a housing referral for Mother in Riverside County on September 9, 2015. Riverside County personnel subsequently denied housing assistance to Mother because she did not live or work in that county. The social worker attempted to get Mother's name "bumped" on a

list for housing in San Bernardino, but San Bernardino County personnel informed the social worker there was nothing she could do to expedite the process.

Mother had moved into her boyfriend's mother's home on September 1, 2015; the home evaluation was completed and approved on September 8, 2015. Nonetheless, anyone else having significant contact with Minor was required to complete a background check and no one, including Mother's boyfriend,⁷ had yet done so. Regardless, Minor was having overnight visitation with Mother every weekend.

During their conjoint counseling, Minor was observed to hug Mother; he was "hyper" and acted "silly." Mother reportedly had no authority over Minor with Minor saying he did not have to listen to her.

Mother failed to show for drug testing on September 14, 2015. Mother completed a hair follicle test on September 17, 2015, which reflected positive for methamphetamine. Mother reported that she had been taking diet pills which may have accounted for the positive result. On September 29, 2015, the juvenile court reissued the order terminating Mother's reunification services, set the section 366.26 hearing, and reduced Mother's visitation to once monthly.

In the report filed on January 15, 2016, the social worker recommended that the court find Minor adoptable and terminate Mother's parental rights. Minor stated that he loved staying in the PAPs' home; Minor followed the prospective adoptive father around

⁷ It is unclear from the record whether Mother's boyfriend is the same boyfriend who was arrested when department personnel initially took Minor into protective custody in this case.

when he came home from work. On January 27, 2016, the court authorized a bonding study to be completed.

In a letter from the therapist who conducted the bonding study, the therapist indicated she had conducted three sessions with Mother and Minor. The therapist opined that: “The quality of the bond between [M]other and [Minor] is crucial to [Minor’s] overall development. [Minor’s] bond is still noticeable with [Mother], however, safety and comfort are primary wounds for him that are currently manifesting as fears of intrusion and unpredictability in his social environment. [Minor] verbalizes he likes routine and his safe home”

The therapist further noted: “I do believe that [Mother’s] unstable environment has negatively affected their relationship[;] however, on all [three] supervised interactions together, there is a mutuality of play and interaction between them” The therapist observed that Minor had high levels of anxiety during the first session which diminished during subsequent sessions. She reported that Minor was in a stable and loving home in which he was happy, but that there was a noticeable bond between Mother and Minor.

The therapist concluded that she required more time to conduct a more lengthy assessment. She recommended a 90-day postponement of the dependency proceedings in order to determine whether Mother could continue to improve with sobriety and parenting skills. The therapist advised that Mother should continue weekly personal therapy and drug testing: “Due to the number of past absences by [Mother] in regards to

sobriety and lack of parental judgment, if [Mother] is not able to follow through this time on my recommendations for further care of self, permanent placement with the [PAPs] should be considered.”

At the section 366.26 hearing held on March 2, 2016, the prospective adoptive mother testified she loves Minor and he loves her. Mother had been visiting with Minor two hours, once monthly; she had not missed any visitation. Minor had been declining all Mother’s telephone calls.

Mother testified she had been visiting Minor every other weekend until a week earlier when the PAPs reduced her visitation. She had not missed any visitation or telephone calls with Minor, although he had been refusing all her telephone calls. During visitation Minor is happy, comes straight to Mother, and hugs her. At the third session of the bonding study, Minor told her he loved her. During the latter two sessions, Minor had opened up to her and talked about his life with her.

Mother testified she resided at her boyfriend’s mother’s home 90 percent of the time, but now had the means with which to move out and just needed somewhere which would accept her. She loves Minor and Minor has an emotional attachment to her. Mother asserted that termination of visitation would harm Minor.

The court found that “although there may be a friendly bond, it is not such a strong parental bond that it would interfere with the legislative preference for adoption.” The court found minor adoptable and terminated Mother’s parental rights.

II. DISCUSSION

Mother contends the court erred in determining the parental relationship exception was inapplicable to termination of Mother's parental rights. We disagree.

Once reunification services have been terminated and a child has been found adoptable, "adoption should be ordered unless exceptional circumstances exist." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) Under section 366.26, subdivision (c)(1)(B)(i), one such exception exists where "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." A beneficial relationship is established if it "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.'" (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) "The parent has the burden of proving that termination would be detrimental to the child" (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207.)

"[T]he court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.' [Citation.]" (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.)

“[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; accord, *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) “We determine whether there is substantial evidence to support the trial court’s ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court’s ruling. [Citation.] If the court’s ruling is supported by substantial evidence, the reviewing court must affirm the court’s rejection of the exceptions to termination of parental rights” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297-298.)

Here, Mother failed to prove that termination of her parental rights would be detrimental to Minor. Minor was taken from Mother’s custody in the instant case on August 23, 2013, 30 months prior to the order terminating Mother’s parental rights. Although Mother had some unsupervised visitation, including overnight visitation, Mother never regained custody of Minor during the entirety of the case. Moreover, Minor had been previously taken from Mother’s custody in a previous dependency case. Furthermore, the MGGM reported that Minor had lived with her until he was three and a half years old. Thus, at the time Mother’s parental rights were terminated, Minor had lived a substantial amount, if not a majority, of his life outside Mother’s custody.

Even early on, supervised overnight visits at MGGM’s home had stopped as Mother apparently used them as an opportunity to do personal errands rather than spend time with Minor. During Mother’s later visits, Mother spent most of her supervised time

with Minor playing video games. The social worker also expressed concern that during unsupervised visitation, Mother was taking Minor to homes and around people who were not cleared by the department. Even though Mother was allowed thrice weekly telephone calls with Minor, Minor sometimes did not wish to take the calls. When he did speak with her, the calls typically lasted five minutes. Minor later refused all telephone calls from Mother.

Mother reportedly had no authority over Minor with Minor saying he did not have to listen to her. Thus, the record supports the court's finding that Mother had "a friendly bond," though not necessarily a parental bond, with Minor and certainly not one which would outweigh the permanency afforded by adoption.

Although there was evidence Minor wished to continue visitation with Mother, substantial evidence supported the court's determination that any relationship between the two did not outweigh the benefit of permanency which would be afforded Minor in an adoptive home. Minor cried "uncontrollably" when told by the PAPs that they were not sure if he would see them again. Minor was relieved when the social worker told him her recommendation was to remain living with the PAPs with whom he had had a relationship since he was placed with MGGM 19 months earlier. Minor said he liked living "100%" with the PAPs. The PAPs filed a de facto parent request noting they had assumed the role of Minor's parents on a day-to-day basis and had had consistent and substantial contact with Minor for nearly two years. The court granted the request. Minor's therapist later reported Minor said he would "99%" like to stay with the PAPs.

Minor stated that he loved staying at the PAPs' home and he followed the prospective adoptive father around.

In contrast to her recommendation, the bonding study therapist noted that Minor's feelings of safety and comfort were of primary concern. Minor liked the routine and safety provided in the PAPs' home; Minor felt loved and happy with the PAPs. The therapist reported that the instability and unpredictability of life in Mother's care had caused Minor's "wounds" and anxiety. Mother already had more than sufficient time to rectify these issues, but never did so. Substantial evidence supports the court's findings.

III. DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
J.

We concur:

RAMIREZ
P. J.

SLOUGH
J.